Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

LYNETTE ROGERS, *prose*

v.

Richard L. Roudebush, Administrator, Veterans Affairs;
John D. Chase, M.D.; Chief Medical Director, et.al

On Petition For Write Of Certiorari
To The NINTH CIRCUIT COURT OF APPEALS
IN NORTHERN CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

LYNETTE ROGERS
624 Cornelia Court
Mountain View, CA 94040
(650) 967-5426

515

QUESTIONS PRESENTED

1. Can an Appellate Court's mandate which continues to enforce the judgments made by a District Court's non-judicial and unlawful conduct in conflict with Supreme Court precedent, be sustained on review by certiorari?

2. Whether a judgment obtained in 1977 which conflicts with Supreme Court precedents be vacated under Rule 60(b)(6), when respondents' egregious and unlawful conduct prevented an appeal and are the proximate cause for the delays?

LIST OF PARTIES

Administrator of Veterans Administration Hospital:

A.M. Gottleb

Franklin Johnson, M.D.

Carl P. Hollenhorst, Chief Personnel

Helen F. Hennessy, R.N., Chief Nursing Service

Helen Johnson, R.N., Asst. Chief Nursing Service

Junne Cramer, R.N., Coordinator

Doris von Morpurgo, R.N., Coordinator

Ernst Burian, M.D.

Barbara Olsen, R.N.

Clara Cutter, R.N.

Esther McShan, R.N.

Does One through Five

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OPINIONS AND/OR ORDERS BELOW

The Order of The Ninth Circuit Court of Appeals filed on August 13, 1999, with a stay of the mandate is reproduced in Appendix A-1. The Order of the District Court filed on March 23, 1999, is reproduced in Appendix A-2. The Order of the District Court denying plaintiff's motion for reconsideration and petition for leave to file an amendment is reproduced in Appendix A-3. Appellees' Reply to appellant's motion is reproduced in Appendix B-1. The original Order of the District Court on February 16, 1977, is reproduced in Appendix C-1.

JURISDICTION STATEMENT

Jurisdiction in the Supreme Court is founded on 28 U.S.C. Section 1254(1) by a writ of certiorari to the Ninth Circuit Court of Appeals. Petitioner presents her petition within the 90-day period under S.Ct. Rule 13.

Jurisdiction in the Ninth Circuit Court of Appeals was founded on 28 U.S.C. Sections 1651(a), 1206. Petitioner submitted a federal question under 28 U.S.C. Section 1331, which was passed over by both the District and Appellate Courts. The Ninth Circuit Court denied her petition and continued its mandate which was obtained by the Government's

fraud and has been in effect for the past six years. The Appellate Court did not have jurisdiction to affirm petitioner's discharge because of the Government's material representations which induced petitioner into reliance by a breach of respondents legal duty. The Ninth Circuit denied her appeal on August 13, 1999 [A-1].

Jurisdiction in the District Court was founded on her original action under Title 28 U.S.C., Sections 1331, 1343, 1346 (a)(2), and 1361; and through ancillary jurisdiction under the California Constitution, Article II, Section 1; and California Code Sections 43 and 44. The District Court denied her motion on March 23, 1999 [A-2]. A motion for reconsideration and amendment to her pleadings was also denied on April 14, 1999 [A-3]. She presented her motions to both the District and Appellate Courts under Fed.R.Civ.Proc. Rule 60(b)(6) for exceptional circumstances. Likewise, brought her actions under the Administrative Procedure Act (although not a jurisdictional statute) (APA) 5 U.S.C. Sections 702-706. In subsequent amended pleadings under Rule 15(c), she amplified on her original jurisdiction under 28 U.S.C. Section 1343 by the process of discovery under Civil Rights Statutes: 28 U.S.C. Section 1343(a)(3)(4); 42 U.S.C. Sections 1988; 1985(2)(3), and the Civil Rights Act of 1964 for violations of Title VI. These violations occurred also under 38 U.S.C. Section 4104 of Chapter 73; now repealed by

Congress and amended under P.L. 102-40, May 7, 1991. However, since relief for unjustified actions under 5 U.S.C. Section 5596, is retroactive by both Congress [H.R. 4838] and case law see Bradley v. Richmond School Bd., 94 S.Ct. 2006 (1974), she claims she is entitled to equitable relief under either civil rights laws by "delayed discovery of the facts to her course of action, or through equivalent compensation under the Back Pay Act because of VA agents unjustifiable discrimination of her by their personnel actions.

Petitioner was appointed to a position in the excepted service, and therefore not subject to the Civil Service Reform Act of 1978, because VA respondents, as early as 1972, held that they were removing her from federal service and denying her conversion to a competitive civil service status. Petitioner was not covered by Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 200e-3(a). Neither was she covered by the Federal Employees Compensation Act. 5 U.S.C. Section 8101 et seq. because her injuries resulted from discrimination, mental distress and loss of employment. See Sullivan v. U.S., 428 F. Supp. 79 (1977).

CONSTITUTION: AMENDMENTS

FIRST: The freedom of speech and the right to exercise thereof.

FIFTH: No person will be deprived of liberty or property, without due process of law.

FOURTEENTH: SECTION ONE, no state shall abridge the privileges or immunities of a citizen, and nor shall any state deprive any person of liberty or property without due process of law or the equal protection of the laws.

STATEMENT OF THE CASE

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

COMES NOW, LYNETTE ROGERS, petitioner herein, *pro se*, and files this Petition for a Writ of Certiorari seeking reversal of the ORDER of the Ninth Circuit Court of Appeals. Petitioner first alleges that respondent, federal agents of the VETERANS AFFAIRS HOSPITAL (VA), Palo Alto, California, who, after discharging her unlawfully from federal service because of a class-based discriminatory animus, have invaded her legal rights. Following her unlawful discharge from federal service as a tenured Registered Nurse caring for sick veterans, respondents retired her personnel records without her knowledge, and characterized the main charge upon which her discharge was upheld by the District Court to that which has serious consequences to her professional standing and liberty interests in the community. Furthermore, the charge imputes criminal behavior to her since it is in violation of the Nursing Practice Act for the State of California. This charge has, and continues to deprive petitioner of, a liberty interest and property rights without substantive due process rights since neither was the charge presented to her in this nature at her discharge hearing, but also, neither have her sustained injuries been addressed by a federal court. Since this charge

carries with it a threat of prosecution under the laws for the State of California, and revocation of her license to practice in this State, her First Amendment rights have been chilled, since, not only would she be obliged to admit to this charge as the reason for her discharge from federal service when seeking employment in community hospitals, but also, employers would be hesitant to consider her application if she also informed them that she was exercising her rights through judicial proceedings for vindication from this change over this protracted period of time.

Rogers submitted her motion to the District Court for relief from judgment and order on March 9, 1997. She held that the original judgment obtained by respondents on February 16, 1977 was obtained by fraud. This is in conflict with Supreme Court precedent. Also, the Court could only review the VA's discharge on procedural errors, and not the merits of her case. Therefore, since petitioner was an excepted employee, she asked the Court to consider these errors under 28 U.S.C. Section 1331 because respondents' engaged affirmative misconduct in the Court which prevented her from taking a timely appeal to the Ninth Circuit Court. Also, because VA respondents fraudulently concealed facts for her cause of action which was inherently unknowable at the time she filed her original action under civil rights laws; she asked the Court to address her injuries under

the doctrine of delayed discovery. VA respondents concealed two references from her which included state action, a conspiracy, and violation of her First and Fourteenth (Section 1) amendments to be considered fairly for employment in federal service. The District Court denied her motion, and a subsequent appeal to the Ninth Circuit Court affirmed this denial. However, there are exceptional circumstances in her case as demonstrated by the first question presented. Specifically, in the first question she presents for review, she alleges that all judicial orders and/or judgments be declared a nullity since they are in conflict with Supreme Court precedent. And, if so adjudged by the Supreme Court, then the original judgment entered on February 16, 1977 be also vacated since the judgment also conflicts with Supreme Court precedent since it is a fraudulent judgment, and she is entitled to equitable relief. She petitions the Court to determine the exceptional circumstances of her case under Rule 60(b)(6), because of the government's misconduct over a protracted period of time thereby impeding the due course in the administration of justice. Respondents have repeatedly asked the federal courts to affirm the judgment by alleging petitioner did not appeal the decision of the District Court. In doing so, respondents are taking advantage of their own wrongful conduct.

REASONS FOR GRANTING THE WRIT

A. Introductory Statement:

Petitioner Rogers respectfully submits two reasons why the Supreme Court should grant her the writ. First, although petitioner has standing under Article III Section 1 of the Constitution because she has a case or controversy and her injuries are legally readressable, however, she is unable to obtain the relief to which she is entitled. The Ninth Circuit Court is obviously fettered by the Court's previously rulings denying her relief even after she informed the Court in March 1993 of judicial misconduct in the lower Court. Therefore, the Supreme Court's ruling on the first question she presents for review is a major priority since only this Court has the ultimate power and supervisory responsibility for the conduct and judicial decisions of the lower Court.

Second, although petitioner's case is not one of national importance since she is without economic, social or political power, it is nevertheless of national importance because, as a citizen, she is granted power from the source of this democracy: the Constitution of the United States. And, under the First Amendment, she has a right to petition the Government for a redress of her grievances. Therefore, she is exercising this right through her petition to the Supreme Court. The second reason Rogers petitions the Supreme

Court to grant her the writ is because of this Court's supervisory power over the Courts and its officers in this country, and specifically the federal courts in this State of California since the actions and issues arose and are applicable here.

On Sunday, April 11, 1999, the San Jose Mercury News in California published an article with the following headline and excerpts:

> "Enforcement of federal laws lag in region"
> Northern California -- despite its status as an international social and economic force -- has been a national backwater when it comes to federal law enforcement.
> Federal prosecution of civil rights violation has been almost non-existent. Id. at p.1A
> There is a general agreement that the policing of federal laws has been in disrepair for a long time, some say for decades. supra at p.16.A.

In petitioner's case, this allegation is not without merit since she has been petitioning the judicial branch of the Government for redress of her grievances because of a federal agency's violations of her civil and legal rights for the past twenty-six years.

Therefore, if persistence qualifies as a requirement for national importance, then perhaps others similarly situated as petitioner will keep faith,

and not cynicism, that this democracy can and will continue to be a living and vibrant force in their daily lives.

B. Argument.

The first question petitioner addresses pertains to the actions not granted to Judge J.P. Vukasin, Jr., by law of the District Court in San Francisco, California. In February 1983, petitioner filed suit against defendants of the Office of Workers Compensation Programs (OWCP) of the DOL under the Privacy Act of 1974, 5 U.S.C. Sec. 552a. Her case was assigned the Docket Number C-83-0719 WWS. On October 17, 1983, petitioner's case was reassigned by the Assignment Committee from WWS to C-83-0719-JPV. Petitioner also had her VA case in the District Court in San Jose. This case was filed on November 18, 1983, and given the Docket Number: C-83-20374 WAI. On a "NOTICE OF TAKING DEPOSITION OF ROBERT C. BURR, M.D. AND NOTICE OF ISSUANCE OF DEPOSITION SUBPOENA" dated February 8, 1984, respondent Chief U.S. Attorney W.T. McGivern responded by letter dated February 15, 1984, that he opposed this Notice because:

> "In this action (C-83-20374 WAI) your complaint is limited to alleged fraud by an Assistant U.S. Attorney in the prior case in 1977. For that reason, I will vigorously oppose

any further attempt to depose Dr. Burr in this case, and if forced to file any motion in order to do so, I will request sanctions under Rules 230-4 and 100-3 of the Local Rules of Court for the Northern District of California.

Sanctions were imposed on petitioner's counsel and she has been unable to obtain competent counsel since then.

FACTS: Petitioner took her appeal to the Ninth Circuit Court and petitioned the Court to vacate its mandate because respondents obtained affirmance of her discharge at the appellate level by fraud. The Ninth Circuit denied her petition. The docket sheets provided by the District Court to take her appeal to the Appellate Court in the last action have been altered to conceal the judicial activity of her pleadings between 1977-1992. Petitioner, however, submitted an attachment to her exhibits to the Ninth Circuit Court showing that she did indeed file a notice of deposition to Dr. Burr, as well as her opposition to the cases as being related as they involved two different federal agencies and two different federal laws. Nevertheless, Judge Vukasin signed a RELATED CASE ORDER by holding that the cases were related on March 26, 1984. But, Judge Vukasin had already granted summary judgment to the government on January 17, 1984. Therefore, he had no subject-matter jurisdiction or personal jurisdiction of

petitioner over the sixty-eight days between the time he granted summary judgment, January 17, 1984, and the date he signed the related case order on March 26, 1984. And, by signing this Order, and ruling on her cases between 1984 and October 20, 1992, Judge Vukasin did so without subject matter or personal jurisdiction of petitioner because he acted in the clear absence of authority when he assigned her case originally to his Court. Petitioner invokes the Supreme Court's landmark precedent case of Bradley v. Fisher, S.C. 13 Wall. 335-357 [(1872) pp. 646-652.] For in this case, the Supreme Court held that: "2. No court can cause a jurisdiction for itself by its own statement of facts put on record, without any proceeding as to the basis of such record." Id. at 647. Petitioner submitted a document to the Appellate Court showing that Judge Vukasin signed a RELATED CASE ORDER which was filed on March 26, 1984. However, the ASSIGNMENT COMMITTEE did not approve the Order until the next day, on March 27, 1984. This is contrary to Supreme Court precedent. The second principle which is at variance by this Court's precedent case of Bradley v. Fisher, is where the Supreme Court holds that where a judge creates for himself a jurisdiction and discretion not given to him by law. supra at 648, and therefore such judgment is subject to examination, supra at 647. Petitioner alleges that the record speaks for itself by showing that Judge Vukasin did not have jurisdiction for the following

reasons: (1) The Chief U.S. Attorney McGivern states unequivocally that:

> I have contacted Ms. Shefler today, and she has informed me that on January 17, 1984, Judge Vukasin orally granted the defendant's motion for summary judgment in Rogers v. Department of Labor. Ms. Shefler will be submitting a proposed judgment in that case within a few days, and informed me that she would thus not agree to any deposition of Dr. Burr, or any other discovery in that case."

Therefore, petitioner again alleges that, by respondent's own admission, there was no case to relate to since Judge Vukasin entered summary judgment in January 17, 1984, but he signed a related case order which was filed on March 26, 1984, sixty-eight days later. In addition, the District Court in changing its rules, changed the number of her VA case to C-84-1519 JPV. But, Judge Ingram, in San Jose, was apparently not notified of these changes and he
issued his Order on April 19, 1984. By changing the number on petitioner's VA case while it was still under submission before Judge Ingram, petitioner was prevented from taking an appeal from this Order to the Ninth Circuit Court. On July 16, 1992, petitioner filed an affidavit motion for Disqualification of Judge Vukasin under 28 USC §, § Section 144 and L.R. 205-3. Judge Vukasin made his own ruling on her

motion and denied her petition. Petitioner alleges that because Judge Vukasin usurped his authority by the clear absence of subject matter jurisdiction initially then all subsequent rulings from his unlawful actions, including her initial appeal to the Ninth Circuit in June 1986 and the Court's Memorandum filed on March 13, 1987 are a nullity. The record shows that Judge Vukasin made his rulings on all her consolidated cases at the District and Appellate levels. Therefore, the only case untainted by his unlawful conduct is C-73-0739 CFP on February 16, 1977. It is this case petitioner presents to the Court in her second question for review since it is tainted by the Government's fraudulent conduct.

The second question petitioner submits for the Court's consideration pertains to the government's response to her motion filed in the Ninth Circuit Court in No. 99-16125. On page 6 in this reply, respondents claim that Rogers' motion for relief from judgment should be denied because she has had a "full and fair consideration" of her claim. In Black's Law Dictionary, a fair consideration is synonymous with "Adequate consideration" and defined as: "That which is not so disproportionate as to shock our sense of that morality and fair dealing which should always characterize transactions between man and man" Id. p.39. Rogers has previously established that all judicial judgments of the District and appellate levels which were rendered subsequent to March 27, 1984,

should be declared a nullity because the Court, under the judgeship of John P. Vukasin, Jr., acted in the clear absence of all jurisdiction over the subject matter. Therefore, petitioner requests the Court to consider the Court's original ruling on her discharge on February 16, 1977, in C-73-0739-CFP, to determine respondents conduct as to whether there is a disproportionate chasm between the government's sense of fair dealing and petitioner's charge of the government's misconduct. Consequently, a justifiable controversy still exists between the parties. Petitioner, in her response filed July 30, 1999, to appellee's motion cited five instances where the judgment was unfairly obtained. She has tried to address the issue of fraud here with as much specificity based upon the principles of law and as required by Federal Rules of Civil Procedure. Therefore, Rogers invokes the Court's plenary jurisdiction to satisfy these requirements under the Supreme Court's case of Hazel- Atlas Glass Co. v. Hartford Empire, 64 S.Ct. 997, 1001, which states that:

> Every element of the fraud here disclosed demands the exercise of the historic power of equality to set aside fraudulently begotten judgments.
> Facts in the record: First element.

Rogers' separation from service began on August 2, 1973, by her receiving an unsatisfactory

Proficiency Report from Head Nurse, Esther McShan, R.N. Because respondents introduced this document among their exhibits while her case was under submission in the Court of Claims in 1988, petitioner placed a telephone call to E. McShan, R.N., a federal retiree who was residing in Woodlake, California. Rogers' affidavit in the District and Appellate Courts state that McShan expressly admitted, by phone, that she was not the author of this report. She agreed to provide a statement attesting to this fact. Therefore, Rogers employed the services of a Private Investigator, E. Piggins, of Harder and Associates, Los Altos, California, to personally obtain this statement. But McShan changed her mind and provided Rogers with a short statement dated April 17, 1989, informing her that after she consulted with her attorney, he advised her to have "no involvement in this matter". Rogers filed a motion in the Claims Court under Rule 60(b)(3) to vacate the Court's judgment entered on November 2, 1988 because of this fabricated document. The Court denied her claim by claiming a lack of jurisdiction, and issued a protective order on behalf of the government. At the District and Appellate Court levels, Rogers was provided numerous false entries on this and related discharge documents by respondent VA. She also provided testimony at her discharge hearing in which VA agents claimed that petitioner's immediate Head Nurse supervisors never had a confidential counseling conference with her about her alleged deficiencies as

required by VA regulations. In related pleadings she also showed that shortly after she received this fabricated Proficiency Report, she was assigned to clerical duties in the Nursing Office where she personally observed a clerical employee preparing a proposal for McShan to receive a high quality increase. Nevertheless, VA respondents denied her within-grade increases three times based upon this report. And, Howard T. Chang, Asst. U.S. Attorney, personally submitted this report to the Court before the Honorable Charles B. Renfrew with McShan's affidavit on the U.S. Attorney's letterhead. At the hearing on September 4, 1973, the Court, in reliance on the polluted documents said:

> THE COURT: My understanding that when an employee was given an unsatisfactory rating on the proficiency scale, that the rules contemplate that she will be given an opportunity to appear before an appropriate board before any action is taken... [Trans. p.10, ln.18-23. (Excerpt from motion in D.C.)].
>
> THE COURT: Are they preparing for a hearing (Trans. p.17, ln.14]
> MR. NEAL (Chief V.A. Attorney): They are preparing charges to submit a removal action [Trans. p.17, ln. 15-16]

On September 4, 1973, counsel informed the Court that the Proficiency Rating System under Chap. 6 of DM&S Supp. MP5-Part II, was unconstitutional. The Court passed over the issue. And, the VA regulations held that only the charges served will be addressed and not to matters outside these charges. Therefore, petitioner's rights to due process were violated. The period to remove Rogers from federal service extended over five years (1972-1977).

The second element in this fraudulent judgment pertains to the question of the legality of the disciplinary board which discharged petitioner. Her counsel, Joseph Remcho, affirmatively stated in support of his Motion for Summary Judgment dated December 2, 1976, that the composition of the VA disciplinary board did not comply with statutory and regulatory requirements under 38 U.S.C. Ch. 73, and MP-5. Ch. 8, Ch. Sections A & C which call for the permanent chairman to be a physician, and not a nurse. And, to influence the Court, respondents introduced a Memorandum dated May 3, 1973, the subject of which states: "Change in Chairmanship of Disciplinary Boards". This Memorandum allegedly signed by the Chief Medical Director (CMD) Dr. John D. Chase, recommended that the policy by changed so that the CMD can appoint a nurse, rather than a physician, to be the chairperson of disciplinary boards. In 1982, the Ninth Circuit held otherwise by stating in United States v. 53 Electus Parrots, 685

F.2d 1131, 1136 (1982) that:

Policy pronouncements by federal agencies are not entitled to the force and effect of a "law of the United States" unless they prescribe substantive rules (not interpretive or policy statements) and (2) are promulgated pursuant to a specific grant of authority requirements as imposed by Congress.

Both previously under Title 38 Ch. 1 Section 1.551 of the Code of Federal Regulations, and the current law under 38 U.S.C. Ch. 74, states under Pub. L. 102-40, Section 204, that the regulations prescribed by the Secretary of the VA shall be published in the Federal Register. The Administrative Procedure Act (APA) calls for agency's substantive rules to be published in the Federal Register, since this change would have a substantial impact on nurses in federal service. Brown Exp, Inc., v. United States, 607 F.2d 695, 696 (1979). On November 18, 1983, petitioner filed an independent action for Equitable Relief from Judgment under FRCP Rule 60(b) for respondents' fraud upon the Court in 1977. Respondents actively deceived the Court with respect to two issues: (1) that the chairperson of a disciplinary board can be a nurse instead of a physician appointed by the CMD subsequent to a policy change, and (2) the VA regulations had been revoked prior to petitioner's hearing. The record before the Appellate Court also confirms that petitioner's counsel went to Washington,

D.C., for a meeting with the Asst. General Counsel of the VA: Mr. Audley Hendricks on November 21, 1983 to seek an informal resolution of Rogers' case but without results even though the VA counsel informed petitioner's counsel that the relevant regulation in MP-5, Part II, Chap. 8, Section C. which governs the composition of VA disciplinary boards had never been changed. Nevertheless, in respondents Opposition to petitioner's motion filed on March 19, 1984, the Chief Asst. U.S. Attorney, William T. McGivern states that Paul Fitzpatrick, Asst. U.S. Attorney had presented facts which were true. Petitioner submitted an affidavit to both the District and Appellate Courts alleging that her counsel only recently heard from respondents the week previous to his appearance in Court, that the VA regulations had changed. Therefore, he was actively misled to believe the government's assertion as reasonable since the regulations used by petitioner were dated July 27, 1965. Also, 1977 any grounds for appeal without evidence and based only upon any misgivings about the veracity of the Government's word by its sovereign agents would be at variance with the role of Government as the protector of its citizens' rights and an attorney's oath of office. Therefore, petitioner was actively misled to believe that there were no grounds for an appeal by these federal agents. Rogers also later discovered after her discharge hearing before the Court, and prior to filing her independent action in 1983, that VA agents did indeed lobby Congress in

1976 to get the law changed while her administrative appeals were in process. On August 27, 1976, the Veterans Omnibus HealthCare Act on S. 2908 was introduced by the Senate for debate. On page 105 of this Report No. 94-1206 of the 94th Congress 2d Session, it states that:

> Third, the rewritten Section 411 in the Committee bill makes several changes in the statutory provisions for selection and composition of disciplinary boards...Another specifies that appointment of the chairman of the board shall be made by the Chief Medical Director, and election of the board secretary by a majority of the board members (under current law (Section 4110(b)). The Administrator (delegated to the chief medical director by regulator) appoint both the chairman and secretary.

Two years later, on January 25, 1979, the 96th Congress 1st Session printed its report titled VETERANS BENEFITS for the Committee on Veterans' Affairs. In the FOREWARD of this report it states that:

> This publication, first issued September 15, 1958, contains the exact text of all such laws, including amendments made through the 95th Congress.

On page 366 of the report under Section 4110, Disciplinary boards, it states under (b) that: "The Administrator shall appoint the chairman and secretary of the board, each of whom shall have authority to administer oaths." Therefore, petitioner again alleges that the extrinsic document dated May 3, 1974, resulted in a fraud upon the Court. And the discharge board was not "property constituted" as alleged by Asst. U.S. Attorney, Paul J. Fitzpatrick, in his motion for summary judgment in 1977. Likewise, respondents' egregious conduct continued in 1984, when Chief U.S. Attorney William T. McGivern tenaciously defended the government's position for summary judgment dated March 19, 1984 that: "Under no circumstances can it be said that defendants committed fraud upon the Court". [p. 4 of motion, ln. 15-16]. In Service v. Dulles, 77 S. Ct., 1152 (1957), the Supreme Court held that "regulations validly prescribed by a government administrator are binding upon him as well as the citizen, and that this holds true even when the administrative action under review is discretionary in nature."

The third element of fraud respondent VA engaged in was by entering false entries on her personnel records which were retired, without her knowledge and signature, to the National Personnel Records Center, GSA, St. Louis, MO. She retrieved these records under the FOIA in 1979. On these records, VA respondents made the following changes

for the purpose of avoiding any oversight from the Civil Service Commission (CSC), now Office of Personnel Management (OPM). Under 38 U.S.C. Section 4109, petitioner was subject to the provisions of and entitled to benefits of retirement under Chapter 83 of Title 5. But to mislead the CSC into believing that her case did not require a consideration for an annuity into which she paid through monthly contributions deducted from her salary, respondents changed the Nature of the Action on two documents: (1) on VA Form 10-2543 titled: BOARD ACTION, the name of the disciplinary board which discharged her was now claimed to be a Professional Standards Board under which an employee can be summarily discharged. And, on VA Form 5-4652-3 titled: REQUEST FOR PERSONNEL ACTION, it states under the Nature of the Action (NOAC) as a "Termination". Under the Guide to Processing Personnel Actions, the CSC provides a "Table of Processing Nondisciplinary Actions that are initiated by the Agency". If the employee's separation qualifies, as respondents held to be on her documents under column "C", as 355, then the NOAC is alleged as a "termination". The FPM Supplement 26-33 defines "Termination" as a non-disciplinary action imitated by the agency. The purpose of this change was to also prevent the CSC from reviewing her records if she applied for a disability retirement under U.S.C. Section 8337. Therefore, on her administrative discharge records, the VA has held that

the action taken was of a non-disciplinary nature. But on judicial records, the action is taken as of a disciplinary nature.

The fourth element pertains to a false representation of a matter of fact by VA agents' conduct. Petitioner submitted relevant exhibits to the Appellate Court to affirm that she was discharged without Congressional authority which is in conflict with the Supreme Court precedent in Greene v. United States 615-617 (1964) in which the Court held that petitioner Greene's security clearance revocation and subsequent discharge were not validly authorized. The record shows that petitioner, who was not previously informed by the VA of the date her LWOP was to expire, received a letter from the Chief Personnel Officer, W. Hicks, informing her that her LWOP had expired, and offering to obtain authority to extend her leave if she replied within a specified period with reasons for the needed extra time. Rogers was professionally advised, for her overall well-being, not to return to the working conditions that she was previously subjected to by the VA. Respondents segregated and isolated her by confinement to a small room for a period that extended over approximately one hundred and six days, because VA respondents alleged that she receive an unsatisfactory PROFICIENCY REPORT. After Rogers received her personnel records under the FOIA, she discovered that no such authority to extend her LWOP had been

obtained. Therefore, Rogers, in reliance of VA respondents' false representation, she attended the discharge hearing in good faith, not knowing that VA respondents had not obtained authority to extend her LWOP. She therefore sustains irreparable injuries from this federal discharge for the past twenty-four years.

Petitioner presents a summation of the points she has presented in her petition to the Supreme Court. Petitioner filed an appeal to the Ninth Circuit Court on July 13, 1999. As a prerequisite to the Appellate Court's review of the District Court's Order of denial, she petitioned the Ninth Circuit Court to vacate its continuing mandate which has been if effect for the last six years. It was first issued on October 15, 1993, because agents of the Department of Justice petitioned the Appellate Court, through a motion for summary affirmance dated October 15, 1993, to affirm her discharge from the VA. Rogers, however, alleges that this affirmance and mandate was procured by fraud since respondents distorted the facts as to the conduct of Judge J.P. Vukasin who refused to recuse himself in her case after she filed a motion on July 16, 1992, in the District Court. Her appeal followed with respect to this issue. Petitioner alleged and gave specific instances of Judge Vukasin's bias in her case. Rogers identified two facts in support of her allegation to the Ninth Circuit in this her last appeal

that respondents induced the Ninth Circuit Court to affirm her discharge by fraud. First, she alleged that Judge Vukasin signed a Related Case Order between her case against the Department of Labor in C-83-0739-JPV, San Francisco, and her case against the Veteran's Administration in C-83-20374-WAI, San Jose. She further provided evidence to the Appellate Court that this Related Case Order was filed in the District Court, San Francisco, sixty-eight days after Judge Vukasin entered summary judgment in favor of the VA on January 17, 1984. Therefore, Judge Vukasin had no subject matter jurisdiction over petitioner because there was no case before him to relate to when he signed this Order. Second, the District Court's "Reassignment Order" filed on March 29, 1984 states that Rogers' case has now been assigned a new number: C-84-1519-JPV. And, that "ALL MATTERS OTHER THAN TRIAL DATES PRESENTLY SCHEDULED FOR HEARING ARE VACATED AND SHOULD BE RENOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THE CASE HAS BEEN REASSIGNED." However, there is no record of any signed agreement between the transferor and the transferee judges. Therefore, Judge J.P. Vukasin acted in clear absence of all jurisdiction when he signed this Related Case Order. Consequently, Judge W. Ingram was unaware of these unlawful proceedings and entered Judgment in favor of VA respondents on April 19, 1984; but petitioner was

prevented from taking an appeal in C-83-20374-WAI because Judge Vukasin changed the number of her case from C-83-20374-WAI to C-84-0519-JPV. Therefore, the Ninth Circuit Court's affirmance of the District Court's denial and respondents motion in the consolidated appeal in C-73-0739-CFP; C-83-0719-JPV; and C-84-1519-JPV, are called into a question of validity when she took her second appeal to the Ninth Circuit Court. Therefore, Rogers petitions the Supreme Court for a writ of Certiorari to the Ninth Circuit Court to determine whether its previous and last orders of denial of petitioner's claims are lawful as a result of the conduct of Judge Vukasin, or if they are a nullity and should be reversed based upon Supreme Court precedent.

The second issue Rogers presented in her petition to the Supreme Court is whether the judgment respondent's received in their favor on February 16, 1977, should be affirmed because of the egregious conduct of both VA and DOJ's agents of the Government. In petitioner's pleadings in both the District and Appellate Courts, she alleged that the judgment was obtained by respondents' fraud upon the Court since the unsatisfactory Proficiency Report was fabricated and resulted in her injury. In 1989 she discovered that Esther McShan, RN, was not the author of this Report which bears her signature. Respondents of the DOJ submitted this report with an

affidavit to authenticate its validity to the District Court in 1973. And the Court in reliance on the validity of these documents deferred her case back to the VA agency for the purpose of convening a board to hear impending changes against Rogers. In a continuing pattern of misconduct, federal agents next submitted another fabricated document in the form of a Memorandum dated May 3, 1972, in response to allegations raised by petitioner that the alleged disciplinary board that discharged Rogers was not validly authorized. By an affirmance defense respondents alleged that the VA regulations had been changed. These false presentations, she later discovered, were made by respondents in their pleadings to influence the Court and undermine its integrity when the Court was reviewing her discharge. She presented these findings to Judge Vukasin in 1985 in C-84-1519-JPV, and took her case *pro se* on her first appeal to the Ninth Circuit Court who filed a Memorandum on March 13, 1987, by a denial of her claim and asserting that Rogers had not sustained her burden of showing misrepresentation and fraud. But she alleges that Judge Vukasin acted in the clear absence of authority since he did not have subject matter jurisdiction when he signed the Related Case Order. Therefore, by changing the number of her case and assigning a new number to it does not in itself breathe any life of validity to these judgments which followed at both the District and Appellate levels. Therefore,

petitioner respectfully petitions the Supreme Court to nullify this judgment also because of the egregious conduct of Judge Vukasin, as well as federal agents of the Department of Justice and the Veterans Administration in the Federal Courts. Federal defendants were party to a manifest injustice by Judge J.P. Vukasin of the District Court by seeking a judicial affirmance of his judgments with knowledge that they were unlawful. Therefore, this pattern of respondents' misconduct resulted in years of litigation and were the reasons for the delays.

CONCLUSION

Petitioner's conclusion is founded upon the principles established by the Supreme Court itself through its precedents. A definite Constitutional Standard was recognized by the Ninth Circuit Court in Smith v. City of Fontana, 818 F.2d.1411, 1415 (1987) with respect to both the procedural and substantive constitutional protections of due process in which Chief Justice Rehnquist held that:

> By requiring the government to follow appropriate procedures when its agents decide to "deprive any person of life, liberty, or property" the Due Process Clause promotes fairness in such decisions. And by barring certain government actions regardless of the fairness of the procedures used to implement them, it serves to prevent governmental power being "used for purposes of oppression".

Rogers submits respondents' response to the Ninth Circuit which again calls for a denial of her claim to relief [B-1].

She has established that, in her case, the government used its powers by fraud. And, from the period of the discoveries to the length of the time her case has been in the courts (1983-1999), is further evidence that this power was not used fairly. The Supreme Court has also held that:

> From the beginning there has existed along side the term rule a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry...But where the occasion has demanded where the enforcement of the judgment is "manifestly unconscionable", they have wielded the power without hesitation Hazel-Atlas Glass Co. v. Hartford-Empire Co., supra 1000-1002.

Therefore, petitioner also seeks the Court's review of the judgment entered in the District Court on February 16, 1977 because this judgment was fraudulent [C-1]. Petitioner respectfully petitions the Court to submit her case to this Court against VA respondents' invidious discrimination of her on the merits. She respectfully petitions the Honorable Justices of the Supreme Court to grant her the writ of certiorari.

Respectfully submitted,

Date: November 1, 1999 Lynette Rogers

LYNETTE ROGERS, *prose*

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED AUGUST 13, 1999
Cathy A. Catterson, Clerk
U.S. Court of Appeals

LYNETTE ROGERS, Plaintiff-Appellant, v. ADMINISTRATOR OF VETERANS ADMINSTRATION HOSPITAL, et al., Defendants-Appellees.	No. 99-16125 DC# CV-73-00739-CAL Northern California (San Francisco) ORDER

Before: BROWNING, SCHROEDER and PREGERSON, Circuit Judges

Upon review of the record and appellant's response to this court's June 29, 1999 order to show cause, this court hereby summarily affirms the district court's March 23, 1999 and April 14, 1999 orders denying appellant's motions for reconsideration of the 1977 judgment. See United States v. Hooton See United States v. Hooton, 693 F.2d 857 (9th Cir. 1982) (per

curium) (summary affirmance appropriate where result is clear from face of record).

All pending motions are denied as moot. No motions for reconsideration, rehearing, modification, clarification, stay of the mandate or other filings shall be accepted in this closed docket.
AFFIRMED.

S:\PROSE\panelords\8.99\August10\99-16125.wpd

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FILED March 23
8 14 AM '99
Richard W. Weiking
Clerk
U.S. District Court
No. Dist Of CA
No. C-73-0739-CAL

LYNETTE ROGERS,

Plaintiff,

v.

THE U.S. VETERANS AFFAIRS, et al.,

Defendants.

ORDER

Plaintiff has filed a motion for relief from a prior judgment of this court, under Federal Rule of Civil Procedure 60(b)(6).

This action was commenced in 1973. Since then it has been addressed by five other judges of this court, one of whom is now retired and two whom are deceased. The motion seeks to set aside the judgment which was entered in favor of defendants and against plaintiff in February 1977. Defendant did not appeal from that judgment.

However, fifteen years later, plaintiff moved for relief from the judgment. That motion was denied in October 1992. Plaintiff appealed from the denial, but the denial was affirmed by the United States Court of Appeals.

Plaintiff filed another challenge to the judgment in June 1994. That challenge was also denied by the district court, and the denial was affirmed by the Court of Appeals.

Another five years later, plaintiff seeks to try again. She makes the motion under Rule 60(b)(6), which provides that relief from a judgment may be granted for "any other reasons justifying relief from the operation of the judgment." But it is obvious from her motion that plaintiff is arguing her late discovery of some information. See Motion, pages 3 and 4. Such delayed discovery really falls within the "newly discovered evidence" subsection of Rule 60(b)(2), which is subject to a one year period of limitations.

This court has also reviewed the evidence which plaintiff submits in support of her motion. Virtually every item of that evidence has existed since the 1970's. What few later matters plaintiff cites are not material to the arguments which she is reasserting, and do not constitute evidence establishing a valid cause of action.

Plaintiff had ample opportunity to litigate this case between the date of its filing in 1973 and the date of the judgment about which she now complains, February 1977. In addition, she has filed two previous motions attacking that judgment, both of which have been rejected by the district court and the Court of Appeals.

Plaintiff's motion is therefore denied.

IT IS SO ORDERED.

Dated: March 23, 1999. s/
CHARLES A. LEGGE
UNITED STATES
DISTRICT JUDGE

Order
No. C-73-0739-CAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED March 23
8 14 AM '99
Richard W. Weiking
Clerk
U.S. District Court
No. Dist Of CA

No. C-73-0739-CAL

LYNETTE ROGERS,

Plaintiff,

v.

THE U.S. VETERANS AFFAIRS, et al.,

Defendants.

ORDER

Plaintiff's motion for reconsideration and petition for leave to file an amendment, filed on April 6, 1999 and April 7, 1999 respectively, are denied for the reasons set forth in this court's order of March 23, 1999.

IT IS SO ORDERED.

Dated: April 14, 1999.

/s
CHARLES A. LEGGE
UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LYNETTE ROGERS,	) No. 99-16125
	)
Plaintiff-Appellant,	) No. CV-73-00739 CAL
v.	)
	) Appellees' Reply To
ADMINISTRATOR OF	) Motion To A Single Judge
VETERANS	) Under FRAP 27(a)(b)(c)
ADMINISTRATION	) For Relief Or
HOSPITAL, et al.	) Modification Of Court's
	) Order Filed June 29, 1999
Defendants-Appellees.	) To Prevent A Manifest
_____	) Injustice

INTRODUCTION

On June 29, 1999, this Court issued an order to show cause why the judgment in this appeal should not be summarily affirmed. (Exhibit 1 of Exhibits In Support of Motion To A Single Judge Under FRAP 27(a)(b)(c) For Relief Or Modification Of Court's Order Filed June 29, 1999). Appellant Lynette Rogers was required to respond within 21 days of the entry of the order; appellee was permitted to file a reply to appellant's response within ten days of service of appellant's response (Id.) On or about July 13, 1999, appellant filed a Motion To A Single Judge Under FRAP 27(a)(b)(c) for Relief Or Modification

Of Court's Order Filed June 29, 1999, To Prevent Manifest Injustice. Appellees hereby submit their reply.

FACTS AND PROCEDURAL BACKGROUND

On May 3, 1973, Lynette Rogers filed an action in the United States District Court of the Northern District of California entitled Rogers v. Administrator of the Veterans Administration, et al., C 73-0739 CFP, alleging various civil rights and Privacy Act violations. (Final Exhibit to Exhibits In Support Of Motion To A Single Judge Under FRAP 27(a)(b)(c) For Relief Or Modification Of Court's Order Filed June 29, 1999 (hereinafter "Rogers Exhibits"). On February 16, 1977, the district court granted defendants' motion for summary judgment. (Id.) Judgment was entered on February 18, 1977. (Id.)

In November 1983, Ms. Rogers filed Rogers v. Veterans Administration, et al., C 83-20374 WAI in district court to attempt to vacate Judge Poole's earlier ruling dismissing the 1973 action. (Exh. 11 of Rogers Exhibits) On February 13, 1984, defendants filed a motion to dismiss, or in the alternative, motion for summary judgment. (Id.) On April 18, 1984, Judge Ingram granted summary judgment for the defendants. (Id.) Judgment was entered on April 19, 1984. (Exh. 10 of Rogers Exhibits)

On July 16, 1992, Ms. Rogers' filed a motion for relief from judgment. (Id.) On September 3, 1992, the matter was assigned to district court Judge Vukasin. (Id.) On September 17, 1992, Ms. Rogers filed a motion to alter judgment. (Id.) Thereafter, on October 9, 1992, Ms. Rogers filed a motion to transfer the action to the San Jose Division of the Northern District of California (Id.) On October 21, 1992, Judge Vukasin entered an order denying Ms. Rogers' motions to alter judgment and for an intradistrict transfer (Id.)

Even though case no. C 83-20374 WAI had been reassigned to Judge Vukasin in 1984 and renumbered as C-84-1519 JPV, Ms. Rogers used the incorrect case number on her July 16, 1992, Rule 60(b) motion. Thus, her Rule 60(b) motion was also sent to Judge Ingram's chambers. On December 18, 1992, Judge Ingram denied Ms. Rogers' Rule 60(b) motion.

On November 10, 1992, Ms. Rogers appealed the district court's order denying Ms. Rogers' motion to amend judgment and for intradistrict transfer. (Exh. 18 of Rogers' Exhibits) On February 5, 1993, Ms. Rogers filed an amended notice of appeal to include Judge Ingram's order dismissing her Rule 60(b) motion.

On October 15, 1993, the ninth circuit summarily affirmed the district court. (Exh. 3 of Rogers Exhibits) In the summary affirmance, the ninth circuit stated the following:

> The insubstantiality of consolidated appeal numbers 92-16398 and 93-15383 and 93-15383 is manifest from the fact of appellant's brief. See United States v. Hooten, 693 F.2d 857 (9th Cir. 1982). Accordingly, appellees' motion for summary affirmance in these consolidated appeals is granted these dockets are closed. No motions for reconsideration, rehearing or clarification shall be accepted or entertained in these closed dockets.

(Exh. 3 of Rogers Exhibits)

On March 9, 1999, Ms. Rogers filed a motion for relief from the judgment which was entered in 1977 in the action which she filed in 1973 (Exh. 19 of Rogers Exhibits). On March 23, 1999, the district court entered an order denying Ms. Rogers motion. (Exh. 22 of Rogers Exhibit) In the order, the district court stated the following:

> This action was commenced in 1973. Since then it has been addressed by five other judges of this court, one of whom is retired and two of whom are deceased. The motion seeks

to set aside the judgment which was entered in favor of defendants and against plaintiff in February 1977. Defendant did not appeal from that judgment.

However, fifteen years later, plaintiff moved for relief from judgment. That motion was denied in October 1992. Plaintiff appealed from that denial , but the denial was affirmed by the United States Court of Appeals.

Plaintiff filed another challenge to the judgment in June 1994. That challenge was also denied by the district court, and the denial was affirmed by the Court of Appeals.

Every litigant is entitled to full and fair consideration of a claim, but once it has been ruled upon, litigation must end, no matter how strongly a claimant may feel about the righteousness of her cause. Sterner v. United States, 2 Cl. Ct. 253 (1983). For these reasons, Ms. Rogers' appeal should be denied.

DATED: July 23, 1999 Respectfully submitted,

ROBERT S. MUELLER, III
United States Attorney

s/
JOCELYN BURTON
Assistant United States Attorney

ORIGINAL
FILED
Feb. 16, 1977
William D. Whitaker
Clerk U.S. Dist. Court
San Francisco

POSTED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA

LYNETTE ROGERS,	)	
	)	
Plaintiff,	)	CIVIL NO. C-73-0739-CFP
v.	)	
	)	ORDER
RICHARD L. ROUDEBUSH, Director, Veterans Administration; and JOHN D. CHASE, M.D., Chief Medical Director, Veterans Administrations,	)	
	)	
Defendants.	)	

This matter having come regularly on for hearing before the Court on the defendant's motion to

dismiss or in the alternative for summary judgment, and the respective parties having been afforded the opportunity of being heard and the Court fully advised in the premises; and the matter duly submitted,

IT IS HEREBY ORDERED that:

1. Plaintiff's motion for summary judgment be, and it hereby is, denied;

2. Defendants' motion for summary judgment be, and hereby is, granted.

Dated: 16 Feb 1977

CECIL F. POOLE
UNITED STATES
DISTRICT JUDGE